UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re:	)	
	)	
LARRY FRANCIS ROGERS AND MAE ENCARNADO ROGERS	)	
	)	Chapter 7
Debtors	)	Case No. 17-40743-CJP
	)	

REQUEST FOR EXPEDITED DETERMINATION:
MOTION OF THE TOWN OF FRAMINGHAM FOR AN ORDER THAT THE TOWN IS NOT SUBJECT TO (OR, IN THE ALTERNATIVE, FOR RELIEF FROM) AUTOMATIC STAY

NOW COMES the Town of Framingham (the "Town"), a municipal corporation located in Middlesex County, Massachusetts, by and through its Board of Selectmen, and hereby moves for an order that it is not subject to the automatic stay for purposes of adjudicating and collecting fines issued pursuant to G.L. c. 40, § 21D and otherwise seeking enforcement remedies in connection with the violation of the Town's bylaws. Alternatively the Town requests that this Court grant relief from the automatic stay, pursuant to 11 U.S.C. 362(b)(4), to allow the Town to pursue such fines and enforcement remedies. The Town includes a proposed order below. In support of this motion, the Town states as follows:

1. The Town seeks the instant relief for the purpose of adjudicating pending and/or prospective proceedings before the Framingham District Court in which the debtor, Larry Rogers, purports to challenge tickets issued by the Framingham Building Department under G.L. c. 40, § 21D for violations of provisions of Article V, Section 22 of the Town's Bylaws (the "Nuisance Bylaw," a copy of which is enclosed as **Exhibit A**). Copies of such tickets and related correspondence are attached as **Exhibit B**.

2. On or about April 24, 2017, the debtor filed a Voluntary Petition under Chapter 7 of the Bankruptcy Code.

3. As the attached citations and correspondence reflect, since November, 2016, Mr. Rogers has violated the Nuisance Bylaw by leaving various items of junk and debris strewn about at the exterior of his property at 25 Gilbert Street, including a dishwasher, sofa, wood, cardboard and a rug. The continued presence of such junk and debris create unsafe conditions and blight and is expressly prohibited under the Nuisance Bylaw.

4. In response to these violations the Building Department has issued numerous citations under G.L. c. 40, § 21D, which provides municipal enforcing agents with authority to issue fines for bylaw violations and pursue such fines in local District Court in non-criminal proceedings.

5. The Framingham District Court has scheduled a hearing for June 22, 2017 to adjudicate Mr. Rogers' challenge of certain of the citations. Such date requires an expedited determination of the instant motion.

6. When a debtor files a Voluntary Petition under Chapter 7 of the Bankruptcy Act, 11 U.S.C. § 362(a) provides a so-called "automatic stay" insulating the debtor from many types of actions by creditors and others for the duration of the Bankruptcy Court proceeding.

7. However, the Bankruptcy Act creates an express exemption from the automatic stay for "an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power." 11 U.S.C. § 362(b)(4).

8. Courts steadfastly have applied this exception and found that "is well settled that the Bankruptcy Court cannot interfere with a state agency's legitimate use of its police powers." Vaspourakan, Ltd. v. Licensing Bd. for City of Boston, 85 B.R. 189, 190 (D.Mass.,1988); citing Palmer v. Massachusetts, 308 U.S. 79, 90 n. 17 (1939) (holding that "Congress did not intend

that those who operated a business under the control of a federal court [including trustees in bankruptcy] should be immune from the regulatory authority of the several states"). As the United States Court of Appeals for the First Circuit has recognized with respect to a similar enforcement proceeding, "the automatic stay should not be used as a shield against the application and enforcement of valid state and local laws." Cournoyer v. Town of Lincoln, 790 F.2d 971, 977 (1st Cir.1986) (holding that a town seeking to clear a debtor's property of used truck parts in exercise of its police powers was exempt from the automatic stay provisions of the Bankruptcy Act).

9. This exception has been applied in numerous contexts, including in matters involving the enforcement of:

a. state building codes, see, e.g., In re Spookyworld, 266 B.R. 1 (Bankr. D. Mass. 2001);
b. zoning bylaws, see, e.g., Cournoyer, supra, 790 F.2d 971 (1st Cir. 1986); Patton v. Town of Orford, 323 B.R. 311 (1st Cir. 2005).
c. labor law enforcement proceedings, see, e.g., NLRB v. P*I*E Nationwide, Inc., 923 F.2d 506 (7th Cir. 1991); Brock v. Rusco Indus., 842 F.2d 270 (11th Cir. 1988).
d. professional licensure proceedings, see, e.g., McMullen v. Sevigny (In re McMullen), 386 F.3d 320 (1st Cir. 2004);
e. rent regulation enforcement, see, e.g., In re Berry Estates, Inc., 812 F.2d 67 (2d Cir. 1987), cert. denied, 484 U.S. 819, 108 S. Ct. 77, 98 L. Ed. 2d 40 (1987);
f. enforcement of the minimum wage laws, see, e.g., Brock v. Rusco Indus., 842 F.2d 270 (11th Cir. 1988).
g. enforcement of water quality control standards, see, e.g., In re Commerce Oil Co., 847 F.2d 291, 18 C.B.C.2d 1256 (6th Cir. 1988); and

e. environmental violations, see, e.g., Munce's Superior Petroleum Prods., Inc. v. N.H. Dep't of Envtl. Servs. (In re Munce's Superior Petroleum Prods., Inc.), 736 F.3d 567 (1st Cir., 2013); U.S. v. Nicolet, Inc., 857 F.2d 202 (3d Cir. 1988); Word v. Commerce Oil Co., 847 F.2d 291 (6th Cir. 1988); In re Commonwealth Oil Refining Co. Inc., 805 F.2d 1175 (5th Cir. 1986), cert. denied, 483 U.S. 1005 (1987); Penn Terra, Ltd. v. Department of Envtl. Resources, 733 F.2d 267 (3d Cir. 1984).

10. An exception to this rule applies only in cases where the state "acts for a pecuniary purpose," rather than "'to prevent or stop violation of ... safety, or similar police or regulatory laws....' H.R.Rep. 595, 95th Cong., 1st Sess. 342-43 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 51-52 (1978) *reprinted in* [1978] U.S.Code Cong. and Ad.News 5787, 5837, 5838, 5963, 6299." Vaspourakan, Ltd., supra, 85 B.R. at 190; quoting In re Hoffman, 65 B.R. 985, 988 (D.R.I.1986) (Selya, J.).

11. These principles are axiomatic, as the Court described in the following manner in Colonial Tavern, Inc., supra, 420 F.Supp. 44, 45 -46 (D.C.Mass. 1976):

> In my view, the true relationship between the Bankruptcy Act and comprehensive state regulation was described by Judge Augustus Hand in In Re Bay Ridge Inn, Inc., Smith v. New York State Liquor Authority, 94 F.2d 555, 557 (2nd Cir. 1938). . . The basic holding of the case . . . is that the powers of a Bankruptcy Court do not extend to interference in the comprehensive regulatory laws of a state. . .
>
> The force of Judge Hand's opinion is even more apparent in the context of a Chapter XI proceeding, which is voluntary, and in which Rule 11-44 operates automatically upon the filing of a petition. If the debtors' position were to be adopted, Chapter XI would provide an instantly available, cheap and easy sanctuary from all state regulatory enforcement proceedings.
>
> Nothing in the prior case law of s 314 or the available history of Rule 11-44 suggests that the Bankruptcy Act was ever intended by Congress to subvert the valid police power of the states in this manner.

Id.

12. In this case, the Town seeks merely to exercise its valid police powers and protect the public health and safety from blight and nuisance conditions such as those that have persisted, and worsened, at Mr. Rogers' property since at least early November of 2016. The Town's authority to undertake enforcement action with regard to the alleged Nuisance Bylaw violations is paramount to its ability to protect the public safety. As Judge Hand and the Colonial Tavern Court recognized, allowing voluntary petitioners such as the debtor to flout public safety interests with impunity and circumvent state or local enforcement would yield an undesirable policy result and contravene the purpose of the Bankruptcy Act. Id.

CONCLUSION

For these reasons, the Town of Framingham respectfully requests this Court issue an order in the form provided within, declaring that the Town is not subject to the automatic stay in this matter, or alternatively granting relief from the automatic stay pursuant to 11 U.S.C. 362(b)(4), to allow the Town to pursue enforcement remedies with regard to the debtor's violation of the Nuisance Bylaw, including among other enforcement remedies the issuance, adjudication and collection of fines issued pursuant to G.L. c. 40, § 21D in connection with the debtor's alleged Nuisance Bylaw violations, and future violations that may occur.

Respectfully,

TOWN OF FRAMINGHAM,

By its Attorneys,

/s/ Peter L. Mello____
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STATEMENT UNDER M.L.B.R. 9013

Pursuant to Massachusetts Local Bankruptcy Rule 9013, the Town of Framingham hereby states that, prior to filing the motion, the Town of Framingham, through its counsel, attempted to contact the Debtor and co-Debtor by telephone and left a voicemail on the morning of June 9, 2017, advising as to the Town's filing of the instant motion and seeking an expedited determination. Thereafter, on the afternoon of June 9, 2017, prior to the filing of the instant motion, the undersigned counsel spoke with Debtor Larry Rogers by telephone to discuss the instant motion and arranged to have such motion transmitted to Mr. Rogers by e-mail. The Town of Framingham, through its counsel, has separately sent a copy of the motion to the Debtor (who provided an e-mail address on June 9, 2017) by e-mail and first class mail, postage pre-paid and co-Debtor by first class mail, postage pre-paid.

/s/ Peter L. Mello

Dated: June 9, 2017

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

In re:	)	
	)	
LARRY FRANCIS ROGERS AND	)	
MAE ENCARNADO ROGERS	)	
	)	Chapter 7
Debtors	)	Case No. 17-40743-CJP
	)	

PROPOSED ORDER ON THE MOTION OF THE TOWN OF FRAMINGHAM FOR AN ORDER THAT THE TOWN IS NOT SUBJECT TO (OR, IN THE ALTERNATIVE, FOR RELIEF FROM) AUTOMATIC STAY FOR RELIEF FROM AUTOMATIC STAY

Pursuant to 11 U.S.C. 362(b)(4), and for the reasons set forth in the Motion of the Town of Framingham (the "Town") that the Town is not Subject to (or, in the alternative, for relief from) Automatic Stay, this Court determines that the Town's enforcement actions in adjudicating and collecting fines issued pursuant to G.L. c. 40, § 21D and otherwise seeking enforcement remedies in connection with the violation of the Town's bylaws, are excepted from the automatic stay by virtue of 11 U.S.C. § 362(b)(4). In the alternative, this Court hereby orders that the Town is granted relief from the automatic stay in this case and shall be entitled to issue, adjudicate and collect citations and fines under G.L. c. 40, § 21D in connection with the debtor's alleged Nuisance Bylaw violations, and future violations that may occur, and otherwise to pursue enforcement of all past and future violations of the Nuisance Bylaw, or the violation of other laws, rules or regulations applicable to the debtor and his property.

IT IS SO ORDERED:

____

Honorable Christopher J. Panos, U.S. Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Peter L. Mello, hereby certify that on the 9th day of June, 2017, I caused copies of the foregoing Motion of the Town of Framingham for an Order that the Town is not Subject to (or, in the alternative, for relief from) Automatic Stay and Proposed Order to be served on the following parties, individuals and entities as indicated below in the following service list.

Dated: June 9, 2017

/s/ Peter L. Mello
Peter L. Mello

Via First Class Mail and Telephonically:

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